



## DEPARTMENT OF PUBLIC SAFETY POLICIES & PROCEDURES



### POLICY NUMBER

**OPR: 51**

**EFFECTIVE  
DATE:  
07/05/2011**

**ORIGINAL  
ISSUED ON:  
03/17/2008**

**REVISION NO:  
2**

**SUBJECT: INVESTIGATION OF PERSONS SUSPECTED OF DRIVING  
UNDER THE INFLUENCE**

### 1.0 PURPOSE

The purpose of this policy is to establish consistent guidance to all commissioned officers of the Department of Public Safety in the detection, apprehension, and incarceration of persons who are operating a motor vehicle while under the influence of intoxicating liquor or drugs.

### 2.0 POLICY

It is the policy of the Department of Public Safety (DPS) to conduct thorough and complete investigations resulting in successful prosecutions of offenders who are suspected of driving while under the influence of intoxicating liquor and/or drugs. DPS will use directed patrols, sobriety checkpoints, patrol saturations and community awareness education to reduce the number of alcohol crashes throughout the State. DPS shall share statistical data with the Traffic Safety Bureau and the New Mexico Department of Transportation, which will be used to identify areas with a high probability for DWI related crashes and arrests.

### 3.0 APPLICABILITY:

This policy applies to all commissioned officers of the Department of Public Safety.

### 4.0 REFERENCES

- A. CALEA Chapter 61.1.11 – Traffic
- B. National Highway Traffic Safety Administration (NHTSA) DWI Detection and SFST Manual
- C. New Mexico Scientific Laboratory Division Breath Alcohol Testing Instruments Regulations
- D. New Mexico State Statutes; Traffic Offenses; Sections 66-8-101 to 66-8-112, NMSA 1978

### 5.0 DEFINITIONS

- A. **Blood Alcohol Concentration (BAC)** - Percentage of alcohol by volume as determined by obtaining a proper blood sample utilizing the appropriate and current blood kit as furnished by the Scientific Lab Division (SLD). The concentration is measured in grams of alcohol found in one hundred (100) milliliters of blood (**grams/100ml**).
- B. **Breath Alcohol Concentration (BrAC)** - Percentage of alcohol by volume as determined by obtaining proper breath samples from an approved machine. The concentration is measured in grams of alcohol found in 210 liters of breath (**grams/210 liters**).
- C. **Deprivation Period** - Measured time period; Minimum of twenty (20) minutes starting the moment a suspect is deprived of placing anything foreign into his/her mouth (i.e. chewing gum, chewing tobacco, narcotics) and ending when an arrested DWI offender initially begins giving breath samples.

- D. Drug Recognition Expert (DRE)** - A police officer with specialized training in detecting persons under the influence of substances other than alcohol (i.e. narcotic analgesics, hallucinogens, cannabis, CNS depressants, CNS stimulants, inhalants, dissociative anesthetics). District Commanders shall be responsible for keeping qualified DREs and key operators in their respective districts. A DRE will only respond when a BraC is below .07.
- E. Exigent Blood-Draw** - Specific to areas of the State where persons involved in suspected DWI crashes are injured and are transported via ambulance or helicopter to a hospital out of state. It is incumbent for officers in these areas to consult with their local paramedics, flight crews and the District Attorney in their respective area regarding the use of exigent circumstance blood draws. The blood draw ideally should be collected prior to the departure of the arrested suspect if this does not interfere with the medical condition of the driver. This applies specifically to felony investigations such as **Vehicular Homicide, Great Bodily Injury or 4<sup>th</sup> or subsequent DWI**. Refer to NMSA 1978, Section 66-8-103.
- F. Felony DWI** - A felony DWI arrest occurs when it is learned through the investigation that the arrested suspect has at least three prior DWI convictions.
- G. Great Bodily Injury** - An injury to a person which creates a high probability of death; or which causes serious disfigurement; or which results in permanent or protracted loss or impairment of the function of any member or organ of the body.
- H. Implied Consent** - Any person who operates a motor vehicle within this State shall be deemed to have given consent, subject to the provisions of the Implied Consent Act (NMSA 1978, Sections 66-8-105 through 66-8-112) to chemical test(s) of his breath or blood or both, approved by the Scientific Laboratory Division of the Department of Health, pursuant to the provisions of NMSA 1978, Section 24-1-22 as determined by a law enforcement officer, or for the purpose of determining the drug or alcohol content of his blood if arrested for any offense arising out of the acts alleged to have been committed while the person was driving a motor vehicle while under the influence of an intoxicating liquor and/or drug.
- I. Probable Cause for Arrest** - Articulate facts or circumstances that would lead a reasonable officer to believe that a crime has been committed or is being committed and that the person arrested committed the crime.
- J. Vehicular Homicide and Great Bodily Injury** - These offenses are third degree felonies that can only be charged when a driver is operating a motor vehicle while under the influence of intoxicating liquor and/or drugs or when the driver's actions reach the threshold of reckless driving, and is involved in a crash that results in death or great bodily injury. Refer to NMSA 1978, Section 66-8-101 (1985).

## **6.0 PROCEDURE**

- A. DWI Countermeasures** – Countermeasures are used in an attempt to reduce alcohol and/or drug related traffic offenses in the State of New Mexico. All officers are trained in administering Standardized Field Sobriety Tests (SFST) as established by NHTSA. All officers receive certification on authorized breath alcohol testing instruments and receive regular updates to their SFST training and authorized breath alcohol testing instrument certifications. Patrol officers are expected to conduct DWI enforcement as part of their normal everyday duties and will direct their efforts to areas that show a propensity for DWI violations. District Commanders have the authority to create special DWI enforcement units or to participate in DWI Task Forces in their jurisdiction as manpower

## INVESTIGATION OF PERSONS SUSPECTED OF DRIVING UNDER THE INFLUENCE

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allows. Enforcement efforts are supplemented by special state and federal funds designated for DWI prevention efforts.

- B. As part of an officer's regular patrol duties and special enforcement activities, officers will make routine contact with drivers, conduct traffic stops and act as community caretakers. Officers should always be cognizant of the signs and symptoms of impaired driving. Officers shall conduct thorough and comprehensive investigations to determine whether a driver is impaired by alcohol or drugs.
- C. Officers shall be aware that the DWI detection process includes **three phases: Phase One** - Vehicle in Motion; **Phase Two** - Personal Contact; and **Phase Three** - Pre-arrest Screening.
- D. In **Phase One** -Vehicle in Motion, officers must determine if probable cause/articulateable reasonable suspicion for a traffic stop or further detention is necessary to determine whether a driver is impaired. Special attention shall be made to specific indicators during the initial observation of the vehicle in motion and to specific indicators during the stopping sequence.

Probable cause/articulateable reasonable suspicion for a traffic stop for a DWI-related traffic violation can include but is not limited to indicators of driving behavior found in the following four categories. The probability of DWI increases dramatically when a driver exhibits more than one of the indicators.

1. Problems maintaining proper lane position
  - a. Weaving; weaving across lane lines
  - b. Straddling a lane line, center line or lane markers; failure to maintain lane
  - c. Swerving
  - d. Drifting
  - e. Turning with a wide radius
  - f. Almost striking a vehicle or object; near collisions
2. Speed and braking problems
  - a. Stopping problems (too far, too short, too jerky)
  - b. Accelerating or decelerating for no apparent reason
  - c. Varying speed
  - d. Slow speed (10 miles or more under the speed limit)
3. Vigilance problems
  - a. Driving in opposing lanes or wrong way on one-way street or roadways
  - b. Slow response to traffic signals
  - c. Slow or no response to officers signals
  - d. Stopping in traffic lane for no apparent reason

- e. Driving without headlights on at night
- f. Failure to signal or signal inconsistent with action
- 4. Judgment problems
  - a. Following too closely
  - b. Improper or unsafe lane change
  - c. Illegal or improper turn
  - d. Driving on other than designated roadway; driving off roadway
  - e. Stopping inappropriately in response to officer
  - f. Inappropriate or unusual behavior (throwing objects, arguing, etc.)
  - g. Appearing to be impaired
- 5. Driver enters an approved DWI or Drivers' License, Registration and Insurance checkpoint and face-to-face contact reveals evidence of possible impairment.
- 6. In situations where the vehicle is parked and the driver has actual physical control of the vehicle, the driver should be investigated as operating the motor vehicle.
- 7. **Stopping Sequence** - If probable cause/articulable reasonable suspicion exists an officer shall, unless exigent circumstances or when responding to a higher priority call, make an investigative traffic stop in accordance with training and department policy.

Once the stop command has been communicated to the suspect driver, the officer shall closely watch the drivers' actions and vehicle movements during the stopping sequence. Officer safety must always be exercised because alcohol or drug impaired drivers may respond in unexpected and dangerous ways to the stop command.

### **E. Phase Two; Personal Contact**

- 1. Upon approach, officers shall be cognizant of the driver's actions. The investigation conducted may result in the arrest of the driver, issuance of a citation or release of the driver with no formal enforcement action. Upon initial contact with the suspect driver, the officer will request a valid driver's license, registration and valid proof of insurance, if applicable, except when participating in a specified DWI roadblock.
- 2. Signs of impairment evident during the face-to-face contact may include, but not be limited to;
  - a. Difficulty with motor vehicle controls
  - b. Difficulty operating doors or windows
  - c. Difficulty exiting the vehicle
  - d. Fumbling with the drivers' license or registration; difficulty locating proper paperwork

- e. Repeating questions or comments
  - f. Swaying, unsteady or balance problems
  - g. Leaning on vehicle or other object
  - h. Slurred speech
  - i. Slow to respond to officer or requiring officer to repeat
  - j. Providing incorrect information or changing answers
  - k. Odor of alcoholic beverage emitted from the driver
3. The officer shall observe the general appearance and demeanor of the driver for common indicators of impairment, which may include, but not be limited to:
- a. Bloodshot or watery eyes
  - b. Irrational behavior, belligerence
  - c. Disheveled or soiled clothing
  - d. The odor of an alcoholic beverage or drugs, such as marijuana.
  - e. Cover up odors or other unusual odors
  - f. Plain view indicators such as open containers of alcohol or drug paraphernalia
  - g. Admission to consuming alcohol or drugs prior to the stop
  - h. Providing inconsistent responses or making unusual statements
  - i. Impaired dexterity
4. The officer shall watch for the subject's responses to instructions. Divided attention responses by a person under the influence of an intoxicating liquor and/or drug may include, but not be limited to, the following:
- a. Forget to produce all the documents requested
  - b. Produce inappropriate or wrong documents.
  - c. Pass over license and/or registration while searching through the wallet.
  - d. Fumble or drop wallet, license or other documents.
  - e. Unable to retrieve documents; using fingertips.
  - f. The subject may ignore questions as concentrating on retrieving documents.
  - g. The subject may forget to resume search for documents after answering question.
  - h. The subject may provide incorrect answers to simple questions.
5. The decision to instruct the subject to exit the vehicle may be based on the suspicion that the subject may be impaired. Even though the officer has a strong suspicion that the subject is driving under the influence, the subject is usually not yet under arrest.

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## INVESTIGATION OF PERSONS SUSPECTED OF DRIVING UNDER THE INFLUENCE

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How the subject exits the vehicle and actions and behavior during and after the exit sequence may give additional and important evidence of alcohol and/or drug influence.

**F. Phase Three - Pre-Arrest Screening** – If reasonable suspicion exists that the driver may be operating the vehicle while under the influence of intoxicating liquor and/or drugs, the officer shall request the driver to perform Standardized Field Sobriety Tests (SFST).

1. Officers should be aware of other physiological symptoms which may be affecting the driver's ability to operate the vehicle safely, such as drowsiness or a medical condition. In such cases, officers shall provide aide to ensure the safety of all persons, up to and including requesting assistance from medical personnel, as appropriate.
2. The officer will ensure that the site chosen to perform the tests is not only safe from traffic but also provides a secure location for the driver to perform the tests.
3. Those department vehicles equipped with a video recorder shall record the entire DWI-related traffic stop for evidentiary purposes. If the departmental unit is not equipped with a video recorder, an audio recording shall be made for evidentiary purposes. The video and/or audio recording shall be maintained in accordance to department policy OPR: 19 *Use of Recording Equipment*.
4. NHTSA training recommends that the officer, prior to psychophysical testing, ask the subject if he/she has any "physical impairment or disability." These conditions must be considered when evaluating the results of the tests.
5. Standardized Field Sobriety Tests (SFST) are recommended and should be given in the same order unless a physiological condition exists which would preclude this. In those situations, alternative tests may be used to assist an officer in determining the level of impairment.
6. NHTSA has scientifically validated three Standardized Field Sobriety Tests. They are the Horizontal Gaze Nystagmus (HGN) Test; the Walk and Turn Test (WAT); and the One Leg Stand Test (OLS). Refer to Attachment B for an outline of each test. Refer to the most recent version of the NHTSA manual for complete details and description of each test.
7. SFSTs are voluntary and can be refused. If SFSTs or alternate tests are refused, the officer shall examine all evidence to include the drivers behavior while driving and during personal contact. The officer shall only make an arrest when supported by probable cause. Probable cause can be established based upon information obtained during detection Phase One - Vehicle in Motion and Phase Two - Personal Contact, and any other evidence obtained during the traffic stop.
8. Officers shall document his/her observations (test results) in the probable cause statement along with any DWI specific forms/citations used in their jurisdiction.
9. A PBT(Portable Breath Test) shall **ONLY** be conducted after SFSTs are administered. A PBT instrument is only to be used as an investigative tool to detect the presence of alcohol and to determine if the impairment seen is the result of alcohol.



## INVESTIGATION OF PERSONS SUSPECTED OF DRIVING UNDER THE INFLUENCE

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10. In the event an arrest is made the officer shall indicate all of his/her observations in the probable cause statement along with any DWI specific forms/citations used in their jurisdiction.

**G. Physical Arrests** - A physical arrest will be made in all cases where probable cause exists. An exception to this is when, for medical reasons, the subject is hospitalized and an actual physical arrest would endanger the driver's medical condition.

**H. Disposition of Vehicles** - All vehicles will be processed according to department policy *OPR: 36 Vehicle Towing and Inventory*. Under no circumstance will vehicles be left at the scene of the arrest.

**I. Implied Consent** - After making the arrest the officer will read the Implied Consent Advisory to the driver. In cases where the driver is unconscious the driver shall be deemed to have given consent. All refusals will be recorded on a Notice of Revocation form and in the officer's Offense/Incident Report. Drivers have no right to speak to an attorney prior to their answer. Miranda Warnings shall not be read prior to the Implied Consent Advisory unless a custodial interrogation needs to occur.

**J. Chemical Testing Methods** - In all cases, the driver must first perform the officer's chosen test before he/she can demand to be tested by an independent source. The department will be responsible for the cost of the independent test. In all cases where the driver has been arrested for a felony DWI offense and a refusal is given for implied consent purposes, a search warrant shall be obtained for the collection of a blood sample.

1. **Breath Alcohol Testing** – If the driver is believed to be driving under the influence of alcohol, the officer shall test the driver on the Intoxilyzer 8000 or approved collection instrument. The officer is responsible for administering the test according to SLD regulations. All approved instruments will be maintained by the district appointed key operator(s) according to SLD regulations.

2. **Blood Testing** – Blood testing shall only be performed by those personnel recognized by the State of New Mexico to perform such tests. The officer is responsible to ensure that the test is administered according to SLD regulations.

3. **Secondary or Independent Blood Tests** – The arresting officer shall fulfill requests by drivers for secondary or independent blood tests.

a. This will be done by ensuring that the arrestee has access to a telephone and phone book in order to contact someone to take the second sample.

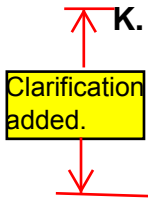
b. If the arrestee requests a second test, it should be administered at a law enforcement facility or local medical facility. The secondary test must be carried out in a timely manner and shall utilize an independent blood test kit.

**\*\* Department blood test kits will NOT be used for secondary or independent blood test samples.**

c. The officer shall have the driver read and sign Attachment B; *Receipt of Blood Sample for Additional Chemical Test Form* to ensure that the driver understands his or her responsibilities regarding the second or independent test.

## INVESTIGATION OF PERSONS SUSPECTED OF DRIVING UNDER THE INFLUENCE

- d. Donors, who want the blood tested, must submit a written request for a chemical test to the DPS facility storing the blood sample. It is the responsibility of the arrested driver to inform the arresting officer, within thirty (30) days after the arrest, of the laboratory, where he/she wants the independent sample to be sent for testing.
- e. Secondary or independent blood samples must be refrigerated and stored as evidence. These test kits shall be maintained at the district office for a period of no longer than thirty (30) days.
- f. If no written request is received from the donor within thirty (30) days from the date of collection, the sample shall be considered abandoned property and destroyed.

 **K. Adult Booking Procedures** - In all cases where the driver's BrAC is .08 or higher, or upon a refusal, the driver shall be booked and incarcerated at the appropriate detention facility. For drivers with BrAC of .04 to .07, officers should consult with the on-call supervisor before incarceration. Should the supervisor and officer determine that the subject may need to be released on their own recognizance and not incarcerated; a local judge shall be contacted for approval. No presumption shall be made that a person was or was not under the influence of an intoxicating liquor and/or drug. If blood alcohol concentration is between .04 and .07, a blood draw should be conducted to test for the presence of drugs. For any driver with a BrAC under .04, refer to Section M.

All commercial motor vehicle (CMV) drivers with a BrAC of .04 or higher, or upon refusal, shall be booked and incarcerated at the appropriate detention facility.

**L. Juvenile Booking Procedures** - For administrative purposes only, juvenile denotes anyone less than 21 years of age. Drivers from age 18 to 20 will be booked and incarcerated following the adult booking procedures listed above. Prior to incarcerating a juvenile under 18 years of age, the officer shall contact the local Juvenile Probation Office to clear the arrest through central intake. If incarceration is denied, the arrested juvenile will be released to a parent or guardian. Refer to department policy *OPR: 38 Juvenile Enforcement and Custody* for further details regarding arrests of juveniles.

### **M. BrAC below .04 and use of a Drug Recognition Expert(DRE) –**

In every case where a driver tests below a BrAC of .04 and drugs may be a contributing factor, the officer shall adhere to the following protocol:

1. The officer shall notify the on call supervisor for guidance given the current circumstances.
2. The officer can request assistance from another officer, if available in a reasonable amount of time, to re-evaluate the subject utilizing the Standardized Field Sobriety Tests.
3. The officer shall attempt to locate a Drug Recognition Expert (DRE) officer, if available.
  - a. A DRE will only respond when the subject is under arrest and the BrAC results are not consistent with the level of impairment as established by the impaired driving and SFST results. A DRE will generally respond to the location where the BrAC was administered.



## INVESTIGATION OF PERSONS SUSPECTED OF DRIVING UNDER THE INFLUENCE

- b. A DRE will possibly be in civilian clothes and will conduct a twelve (12) step medical examination that is specific to the DRE Evaluation Program that will determine a category of drug use.
- c. The DRE Evaluation is voluntary. A subject does not have to submit to the DRE Evaluation.
3. If the DRE recognizes the presence of drugs, the DRE will attempt to obtain a blood sample.
4. The DRE's Evaluation Documentation will serve as further evidence that will aid in strengthening probable cause for the case.
5. If a DRE is not available, the officer may request a blood sample to test for the presence of drugs, pursuant to the New Mexico Implied Consent Act.
6. The officer shall notify the on-call supervisor who shall assist the officer in contacting a local judge to determine if the subject may be released on their own recognizance. The subject shall not be released without authorization from a judge.
7. Should a judge authorize the release of the subject, the on-call supervisor shall make arrangements for the driver to be released. All efforts shall be made to ensure that the release of the subject will not endanger the subject or the public. The vehicle should be released to the owner at no cost. If the driver is exhibiting symptoms not indicative of drug or alcohol use, the officer should assist the driver in obtaining medical attention when appropriate.

Clarification added.

**N. Felony DWI Arrest Procedures** - The investigation of felony DWI will follow the same procedures as detailed in this policy. In felony cases where the arrested driver refuses to comply with the New Mexico Implied Consent Act, a search warrant shall be obtained for his/her blood. A night-time search warrant may be necessary to collect blood which is crucial short lived evidence that will aid in a successful prosecution.

### **O. Vehicular Homicide and Great Bodily Injury Investigation Procedures**

1. Secure crash scene and assist with emergency medical aid.
2. Photograph and document crash scene with diagrams
3. Properly document individuals involved in the crash; identify driver(s) and passengers of vehicles involved; obtain statements from individuals involved, and issue Miranda Warnings, when appropriate.
4. Identify witnesses and obtain statements.
5. Secure vehicle(s) for evidence processing.
6. Secure a breath test or blood draw or both. If a refusal occurs, then obtain a search warrant for the sample.
7. If exigent circumstances arise, attempt to secure a blood draw on scene and then secure a search warrant.
8. The District Commander will be notified through the appropriate chain of command.

## **INVESTIGATION OF PERSONS SUSPECTED OF DRIVING UNDER THE INFLUENCE**

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9. Request assistance from the Special Investigations Division (SID), if a source investigation is needed.
10. Request that an independent analysis of the crash be conducted by the Accident Reconstruction Team.

**P. Routing of documentation** - The officer shall provide the driver with a copy of all documents surrounding the arrest. Only Uniform Traffic Citations specifically for the offense of DWI will be used.

1. **Administrative:** Copies of the DWI citation, Notice of Revocation and Breath Results shall be provided to the Motor Vehicle Division within seven days of the arrest via U.S. Mail.
2. **Court:** Copies of all documents shall be provided to the court of jurisdiction within forty eight (48) hours of the arrest or the next business day should the arrest occur on a Friday evening.
3. **Record Keeping:** A copy of all documents will be maintained at the appropriate district offices.

**Q. DWI Checkpoint Protocol** - All DWI checkpoints will be conducted in accordance with the provisions provided by the City of Las Cruces v. Betancourt decision. Those provisions are:

1. The selection of site and procedural operations of the checkpoint must be made and established by supervisory law enforcement personnel rather than field officers.
2. Restrictions and discretion of field officers will be limited.
3. The safety of the public and the officers must be paramount.
4. The location of the checkpoint must be reasonable.
5. The time and duration of the checkpoint must be reasonable.
6. Indicia of the official nature of the checkpoint must be immediately apparent.
7. The length and nature of detention must be reasonable.
8. The checkpoint must have advance publicity to raise its deterrence value.

### **7.0 ATTACHMENTS**

**A. Receipt of Blood Sample for Additional Chemical Test**

**B. Standard Field Sobriety Tests (SFST) Outline**

### **8.0 APPROVAL**

APPROVED BY: \_\_\_\_\_ s/ Gorden E. Eden Jr.  
DPS Cabinet Secretary

DATE: \_\_\_\_\_ July 5, 2011